

MEMORANDUM FOR THE STAFF DIRECTOR

THROUGH: DAVID MUSSATT, RPCU CHIEF

FROM: INDIANA ADVISORY COMMITTEE

SUBJECT: INDIANA ADVISORY COMMITTEE PROJECT PROPOSAL

Attached for your review and approval is an Indiana Advisory Committee project proposal on *Civil Rights and the School to Prison Pipeline* in Indiana. The Indiana Advisory Committee approved this proposal at a meeting of the Committee on [DATE] by a vote of [] yes and [] no, [] abstentions.

Attachments: Project Proposal
Project Proposal Checklist

This project proposal is:

_____ Approved

_____ Disapproved

_____ Returned for revisions according to comments.

Staff Director

Date

A project proposal of the Indiana Advisory Committee to the United States Commission on Civil Rights

Topic: Civil Rights and the School to Prison Pipeline in Indiana

October 2015

Jurisdiction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These State Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

The Indiana State Advisory Committee wishes to examine the civil rights implications school disciplinary and juvenile justice policies in the State of Indiana which may have a discriminatory impact on students on the basis of race, color, disability status, and/or sex—leading to a disproportionate incidence of law enforcement contact and criminal, rather than administrative, penalties for students of color, males, and students with disabilities, in what has become known as the “School-to-Prison Pipeline.”

A number of federal laws prohibit such discrimination in educational institutions and in the administration of justice, including:

- The Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex, religion, or national origin, including in institutions of public education.¹
- The Equal Educational Opportunity Act of 1974 prohibits deliberate segregation in schools on the basis of race, color, and national origin.²
- The Individuals with Disabilities Education Act (IDEA) requires state and local education agencies to “provide a free and appropriate public education to children with disabilities.”³

¹ Pub.L. 88–352, 78 Stat. U.S. *See Also:* Department of Justice, *Types of Educational Opportunities Discrimination*. Civil Rights Division, Educational Opportunities Section. Available at: <http://www.justice.gov/crt/about/edu/types.php> (last accessed March 2, 2015)

² U.S. Department of Justice, *Types of Educational Opportunities Discrimination*. Civil Rights Division, Educational Opportunities Section. Available at: <http://www.justice.gov/crt/about/edu/types.php> (last accessed March 2, 2015)

³ § 20 U.S.C. 1400 et. Seq. *See Also:* U.S. Department of Justice, *Types of Educational Opportunities Discrimination*. Civil Rights Division, Educational Opportunities Section. Available at: <http://www.justice.gov/crt/about/edu/types.php> (last accessed March 2, 2015)

- The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities in any places of public accommodations, including private schools and daycare centers.⁴
- Section 1 of the 14th Amendment to the U.S. Constitution prohibits any state from denying “to any person within its jurisdiction the equal protection of the laws.”⁵

The Indiana Advisory Committee seeks to study the extent to which these protections, as currently applied in practice, are sufficient to address concerns regarding the number and disparate demographics of youth being transferred from the educational system into the criminal justice system in the state.

Background

The American Civil Liberties Union defines the school-to-prison pipeline as a “trend wherein children are funneled out of public schools and into the juvenile and criminal justice systems.”⁶ Although current federal data show a continued, significant decline in juvenile confinement rates in the United States since 1997,⁷ the country maintains the highest rate of juvenile incarceration of any developed nation in the world.⁸ The Indiana Equity Project explains the connection between such high rates of juvenile incarceration and school discipline policies as follows: “Opportunity to learn is one of the strongest predictors of academic achievement; so it is not surprising that removing students from school for disciplinary reasons is associated with negative academic outcomes, such as course failure, academic disengagement, and ultimately dropping out of school...Suspension itself appears to be a risk factor for future contact with the justice system.”⁹

The American Civil Liberties Union identifies a number of specific policies and practices thought to contribute to this problem, including:¹⁰

⁴ U.S. Department of Education, Office of Civil Rights. Americans with Disabilities Act. Available at: <http://www2.ed.gov/about/offices/list/ocr/docs/hq9805.html> (last accessed March 2, 2015)

⁵ Cornell University Law Institute, 14th Amendment. Available at: <https://www.law.cornell.edu/constitution/amendmentxiv> (last accessed March 2, 2015)

⁶ School-to-Prison Pipeline. May 2014. American Civil Liberties Union. Available at: <https://www.aclu.org/issues/racial-justice/race-and-inequality-education/school-prison-pipeline?redirect=school-prison-pipeline> (last accessed Sept. 30, 2015).

⁷ Pew Charitable Trust Infographic, 2013. Available at: https://chiyouthjustice.files.wordpress.com/2013/09/pspp_juvenile_graphicv2.jpg (last accessed Feb. 27, 2015)

⁸ No Place for Kids: The Case for Reducing Juvenile Incarceration. *The Annie E. Casey Foundation*. 2011. (Feb 27, 2015). Available at: <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>. (last accessed Feb. 27, 2015)

⁹ Skiba, Russell et al. New and Developing Research on Disparities in Discipline. January 2015. The Equity Project at Indiana University. Available at: <http://www.indiana.edu/~equity/projects.php> (last accessed Sept. 30, 2015).

¹⁰ What is the School-to-Prison Pipeline? *American Civil Liberties Union*. Available at: <https://www.aclu.org/racial-justice/what-school-prison-pipeline> (last accessed Feb. 27, 2015).

- *Zero tolerance policies* that automatically impose harsh penalties such as suspension and expulsion regardless of circumstances. These practices often leave students unsupervised and without constructive activities at home, and exacerbate academic difficulties as students fall behind in their coursework.
- *Police presence in school hallways* has shifted disciplinary responsibilities in many schools from teachers and administrators to police, resulting in an increase in school based arrests, often for non-violent offenses such as disruptive behavior.
- *Disciplinary Alternative Schools*, available in some jurisdictions as an alternative for students who have been suspended or expelled, reportedly lack the same educational standards as traditional schools, and often result in students falling farther behind, increasing the likelihood of contact with the juvenile justice system.
- *Juvenile Court Involvement* frequently results in “boilerplate” probation conditions for youth such as prohibitions against missing school or receiving even minor disciplinary infractions at school. Students are then often sent to secure detention facilities for violations of these strict terms.
- *Juvenile Detention* often results in a further decline in students’ academic progress, making it difficult, if not impossible, to re-enter traditional schools upon release, and increasing the likelihood of future law enforcement contact.

According to the U.S. Department of Justice, “Under the disparate impact theory, a recipient, in violation of agency regulations, uses a neutral procedure or practice that has a disparate impact on protected individuals, and such practice lacks a substantial legitimate justification. The elements of a Title VI disparate impact claim derive from the analysis of cases decided under Title VII disparate impact law.”¹¹ Under this theory, the Committee proposes to study the impact of these and other related policies on school discipline and youth incarceration rates in the State of Indiana, particularly as they may unduly influence disparities in incarceration rates on the basis of race, color, sex, and disability status.

According to the National Institute of Corrections of the United States Department of Justice, in 2013 the State of Indiana had an incarceration rate 15 percent higher than the national average, at 454 adults per 100,000 people.¹² The Kids Count Data Center of the Annie E. Casey Foundation reports that for *youth* age 10 and older in Indiana, the incarceration rate is 258 per 100,000 youth, which is approximately 25 percent greater than the national average of 196.¹³ Furthermore,

¹¹See United States Department of Justice Title VI Legal Manual, available at <http://www.justice.gov/crt/title-vi-legal-manual#Disparate>, (last accessed October 09, 2015)

¹² National Average is 395 incarcerated adults per 100,000 people. Source: National Institute for Corrections, Correction Statistics by State, 2013. *U.S. Department of Justice*. Available at <http://nicic.gov/statestats/?st=IN> (Last accessed Sept. 28, 2015)

¹³According to 2011 data, the most recent available. Youth residing in Juvenile Detention, Correctional, and/or Residential Facilities. Annie E. Casey Foundation Kids Count Data Center 2011. Available at: <http://datacenter.kidscount.org/data/tables/42-youth-residing-in-juvenile-detention-correctional-and-or-residential-facilities?loc=1&loct=1#detailed/1/any/false/867,133,18,17,14/any/319,320> (last accessed March 2, 2015)

between 1997 and 2010, the State of Indiana saw a 27 percent decline in youth incarceration rates, while the country as a whole saw a 37 percent decline in youth incarcerations.¹⁴

Despite these recent successes in reducing the overall number of youth incarcerations, data suggests that a number of disparities persist in the demographics of youth who do remain incarcerated, both nationally and in the State of Indiana. In particular, youth involvement in exclusionary school disciplinary actions such as suspension and expulsion, as well as youth involvement in the juvenile justice system, continue to demonstrate a strong disparate impact on the basis of race, color, disability status, and sex. To illustrate:

- *Race/color:* The Annie E. Casey Foundation reports that African American youth face nearly five times the likelihood of incarceration compared to their white peers across the country; Latino and American Indian youth face between two and three times the likelihood.¹⁵ This disturbing disparity is clearly visible in the Indiana Department of Correction data that shows that though African American youth make up only 12.8 percent of the total child population, they represent 32.6 percent of male detention admissions and 24 percent for female admissions.¹⁶ The U.S. Department of Education also reports that nationally, Black students are suspended and expelled at a rate three times greater than white students, while American Indian and Native-Alaskan students are also disproportionately represented.¹⁷
- *Disability status:* According to the U.S. Department of Education Office of Civil Rights, students with disabilities represent a quarter of students arrested and referred to law enforcement nationally, even though they are only 12 percent of the overall student population. Students with disabilities are also more than twice as likely to receive an out-of-school suspension (13%) than students without disabilities (6%).¹⁸
- *Sex:* According to the U.S. Department of Justice, in 2012 the national arrest rate for boys was just under 6,000 per 100,000 males age 10-17, while the arrest rate for girls was less than half this number, at just under 2,500.¹⁹ Similarly, the U.S. Department of Education reports that beginning as early as preschool, boys represent 82 percent of school children

¹⁴ Annie E. Casey Foundation: Reducing Youth Incarceration in the United States. February 2013 Kids Count Data Snapshot. Available at: <http://www.aecf.org/m/resourcedoc/AECF-DataSnapshotYouthIncarceration-2013.pdf> (last accessed March 2, 2015)

¹⁵ Youth in Incarceration in the United States. *The Annie E. Casey Foundation*. 2011. Available at: <http://www.aecf.org/m/resourcedoc/aecf-YouthIncarcerationInfographic-2013.pdf> (last accessed Feb. 27, 2015)

¹⁶ Indiana Department of Correction 2013 Annual Report: Changing Lives. 2013. Available at: <http://www.in.gov/idoc/files/2013DOCAnnualReport-Stats.pdf> (last accessed Sept. 30, 2015)

¹⁷ Civil Rights Data Snapshot: School Discipline, Issue Brief No. 1. U.S. Department of Education Office for Civil Rights. 2014. Available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf> (last accessed Feb. 27, 2015)

¹⁸ Civil Rights Data Snapshot: School Discipline, Issue Brief No. 1. U.S. Department of Education Office for Civil Rights. 2014. Available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf> (last accessed Feb. 27, 2015)

¹⁹ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Juvenile Arrest Rate Trends 1980-2012 Statistical Briefing Book. Available at: http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05230 (last accessed Feb. 27, 2015)

suspended multiple times, while only representing 54 percent of the preschool enrollment.²⁰

Given these well-documented and persistent disparities, the Committee proposes to study underlying factors that may contribute to this concern, and to identify best practices and potential solutions to address it. As part of this inquiry, the Committee intends to examine:

- The role of implicit bias in perpetuating disparities in the application of school discipline policies for students of color. The Kirwan Institute for the Study of Race and Ethnicity defines implicit bias as “the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.”²¹ Research on sources for inequitable application of school punishment show that there are divergent patterns of discipline for white and black students. “The majority of reasons for which white students are referred more frequently seem to be based on an objective event” such as smoking or vandalism. Black students, in contrast, were more often disciplined for infractions “that would seem to require a good deal more subjective judgment on the part of the referring agent.”²²
- The impact of school staff diversity on students’ perceptions of disciplinary fairness. Recent research on this subject suggests that students are more likely to have faith in the fairness within their school when the racial makeup of staff is similar to the student body.²³ A co-author of the study said in a statement: “Increasing the proportion of minority teachers in a school enhances all students’ perceptions of school discipline fairness. Our findings provide empirical support for the arguments of some political theorists that the legitimacy of public institutions is enhanced when those institutions are staffed by people who look like the population more generally.”²⁴

Scope

The scope of this project is limited to an examination of factors contributing to the school-to-prison pipeline in the State of Indiana, and related disparities on the basis of color, race, sex,

²⁰ Civil Rights Data Snapshot: School Discipline, Issue Brief No. 1. U.S. Department of Education Office for Civil Rights. 2014. Available at <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf> (last accessed Feb. 27, 2015)

²¹ Staats, Cheryl. Implicit Racial Bias and School Discipline Disparities: Exploring the Connection. The Kirwan Institute for the Study of Race and Ethnicity at The Ohio State University. May 2014. Available at <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/05/ki-ib-argument-piece03.pdf> (last accessed Sept. 30, 2015)

²² Skiba, Russell, et al. The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment. December 2002. *The Urban Review*, 34(4), 317-342. Available at <http://www.indiana.edu/~equity/docs/ColorofDiscipline2002.pdf> (last accessed Sept. 30, 2015)

²³ Keiser, Lael R. and Don Haider-Markel. Shaping Young Minds; Race, Gender and Symbolic Representation in American Schools. May 2013. Available at http://scholar.googleusercontent.com/scholar?q=cache:w6px8xL6yKkJ:scholar.google.com/+%22Race,+Gender+and+Symbolic+Representation+in+American+Schools%22&hl=en&as_sdt=0,14 (last accessed Oct. 2, 2015)

²⁴ The University of Kansas news office. “Hiring more minority teachers in schools gives fairer perception of discipline.” Sept. 1, 2015. Available at: <https://news.ku.edu/2015/08/24/hiring-more-minority-teachers-schools-gives-fairer-perception-discipline#sthash.ZjXeuPJd.dpuf> (last accessed Oct. 2, 2015)

and/or disability status. The Committee will examine the extent to which specific school disciplinary and juvenile justice policies and practices may contribute to the school-to-prison pipeline and related disparities, as well as alternative practices with the demonstrated potential to address such concerns.

Methodology

This project will include a gathering of data, documents, testimony, and opinions to enable the Indiana Advisory Committee to reach factual determinations. In this project, the Committee will gather direct testimonial evidence from citizens and experts as well as documentary evidence from such individuals. The Committee proposes to hold one, in person public meeting, centrally located in Indiana, during which the Committee will solicit testimony and comments from community members, students, families, education experts, advocates, and school and government officials regarding the potential disparate disciplinary treatment of students or disparate impact of disciplinary policies on the basis of race, color, sex, and/or disability status, and the civil rights implications thereof. The exact date and location of this meeting is to be determined by the Committee. The purpose of this meeting will be to hear information directly from Indiana residents—particularly those who may be/may have been impacted by the school-to-prison pipeline—as well as education officials, scholars, and other experts. The public meeting will be advertised and recorded by a court reporter. The meeting will include time for public comment in which any Indiana resident who wishes to share may do so. The Committee will also accept written statements submitted by residents who are unable to attend the public meeting in person. The Committee may hold additional public meetings via web-conference as needed to expand the testimony received.

The Committee also proposes to gather factual information related to school discipline reports that may indicate disparate treatment on the basis of race, color, sex, and disability status over the previous ten years (2005 – present). Specifically, the Committee will review aggregated state level school disciplinary data and juvenile incarceration rates to better understand what data are currently available, and what data may be missing in order to adequately study this issue and make informed recommendations. Data gathered will be available and open to public comment at the meeting.

A bipartisan subcommittee may be appointed by the Chair of the Committee to work with the regional office of the Commission to collect information that will be presented to the full Committee prior to the drafting of the report. To ensure balance, in consultation with the Committee and USCCR staff, the subcommittee will draft the agenda for the public meetings at which the Committee will hear testimony from residents, scholars, and other experts.

Anticipated Outcomes

An anticipated outcome of the project is to ensure that the U.S. Commission on Civil Rights is advised of existing disparities in the application of school disciplinary and juvenile justice

policies on the basis of race, color, sex, and/or disability status that may contribute to the “school-to-prison pipeline” phenomenon in Indiana and across the country. The Committee hopes that such information will lead to a better understanding of this phenomenon, as well as to specific recommendations for addressing the problem. The Committee proposes to advise the Commission by issuing a report with its findings and recommendations at the conclusion of this project. The report may include recommendations to the Commission for federal policy and statutory changes.

Time Frames

Committee and OSD approval of proposal	October 2015
Advertising	December 2015
Public Meeting in Indiana	February 2016
Completion of research and closing of the official record	May 2016
Draft Report submitted by legal review and editing	August 2016
Approval of report by full committee and public release	September 2016

Anticipated Costs

Staff Travel	\$1,600
Public hearing	
Meeting room	\$500
Sound equipment rental	\$1,000
Transcription services	\$2,000
SAC travel to hearing	\$2,500
 TOTAL	 \$7,600

SAC PROJECT PROPOSAL CHECKLIST

State: Indiana

Project Name: Civil Rights and the School to Prison Pipeline in Indiana

Section I. Approval of Proposal by SAC

1. Was the report voted on by the SAC by mail, meeting, or a combination? _____
2. If the vote was taken by mail:
What was the date the proposal was mailed:
What was the response due date:
Were follow-up calls made to the non-respondents?
List those who failed to respond:
List any special circumstances that apply to any of the non-respondents:
3. If the vote was taken during a meeting:
Was the proposal mailed to members before the meeting: _____ Yes _____ No
When was the proposal sent? _What was the date of the meeting?
Did the SAC review and approve the project proposal (not just the topic)? _____ Yes _____ No
4. What was the vote on the project proposal?

Section II. Approval of Proposal by the Office of the Staff Director (to be completed by OSD)

1. Does the proposal identify actions (by staff and the SAC) that should result in balanced research and testimony? _____
Yes ___ No
2. Does the proposal identify sources to be used to research the topic and do they represent a variety of opinions on the issue? _____
Yes ___ No
3. Are milestones and estimated dates provided? _____ Yes
___ No
4. Is the schedule reasonable given other commitments to the scope of the project? ___ Yes ___ No
5. Is the project within the Commission's jurisdiction? _____ Yes ___ No
6. Is the project budget reasonable given its scope and the availability of funds? _____ Yes ___ No